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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

BF FOODS, LLC, FILO FOODS, LLC, ALASKA AIRLINES, INC., and
WASHINGTON RESTAURANT ASSOCIATION,
Respondents/Cross-Appellants,

v.

CITY OF SEATAC, KRISTINA GREGG, CITY OF SEATAC CLERK,
Appellants/Cross-Respondents,

and the

PORT OF SEATTLE,
Respondent,

and

SEATAC COMMITTEE FOR GOOD JOBS,
Appellant/Cross-Respondent.

**BRIEF OF APPELLANT
SEATAC COMMITTEE FOR GOOD JOBS**

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I. INTRODUCTION

This case will decide the validity of SeaTac Municipal Code (“SMC”) 7.45, also known as the Good Jobs Ordinance (“the Ordinance”). SeaTac Committee for Good Jobs (“the Committee”) seeks reversal of those portions of King County Superior Court Judge Andrea Darvas’ December 28, 2013 Memorandum Decision and Order (“the Order”), which granted in part Plaintiffs’ motion for declaratory judgment on the grounds that (1) the Ordinance is inapplicable and void as to employers and employees conducting business at Seattle-Tacoma International Airport (“Sea-Tac Airport”) pursuant to a jurisdictional provision in the Revised Airports Act of 1945, RCW 14.08.330; and (2) the anti-retaliation provisions of the Ordinance, SMC 7.45.090(A) and (B), are preempted by the National Labor Relations Act, 29 U.S.C. §§ 151-169 (“the NLRA”). CP 1934-1966, §§ II.B and III.B.7 and the corresponding orders in § IV.¹

The trial court’s ruling has effectively denied approximately 4,700 low-wage workers at Sea-Tac Airport the living wage and improved working conditions and job security established by the Ordinance. Declaration of Howard Greenwich (filed in support of the Committee’s Statement of Grounds for Direct Review on January 15, 2014), ¶ 6. All

¹ The Committee filed a Notice of Discretionary Review of these rulings, which the Court subsequently designated as a Notice of Appeal. See letter from Supreme Court dated January 14, 2014.

parties agree that this case warrants direct review pursuant to RAP 4.2(a)(4), because it involves fundamental and urgent issues of broad public import which require a prompt and ultimate determination. *See* Committee’s Statement of Grounds for Direct Review, filed January 15, 2014; City of SeaTac’s Statement of Grounds for Direct Review, filed January 22, 2014; Respondents’ answers to statements of grounds for direct review, filed January 28 and 29, 2014. The Committee seeks accelerated review, and has requested the matter be heard on the earliest possible date during the Court’s Spring Term. *See* Motion for Accelerated Review, filed herewith.

II. ASSIGNMENTS OF ERROR

1. Did the trial court err in ruling that the SeaTac Good Jobs Ordinance, SMC 7.45, is void as to employers and employees conducting business within the boundaries of Seattle-Tacoma International Airport in the absence of substantial evidence and findings by the trial court as to whether any portion of the Ordinance would “interfer[e] with respect to the operation of” the airport so as to be proscribed by RCW 14.08.330?
2. Did the trial court err in ruling that the SeaTac Good Jobs Ordinance, SMC 7.45, is inapplicable and void as to employers and employees conducting business within the boundaries of Seattle-Tacoma International Airport because it is proscribed by RCW 14.08.330?
3. Did the trial court err in ruling that the anti-retaliation provisions of the SeaTac Good Jobs Ordinance, SMC 7.45.090(A) and (B), are preempted because they impose “supplemental sanctions” on employers for violations of the National Labor Relations Act?

III. STATEMENT OF THE CASE

In November of 2013, voters of the City of SeaTac (“SeaTac”) approved SeaTac Proposition 1, sponsored by the Committee. The Ordinance sets minimum employment standards for employees of certain hospitality and transportation industry employers, including an hourly minimum wage of \$15.00, adjusted annually for inflation; safe and sick leave; tips and service charge retention; certain protections against job loss in the case of contractor turnover; and additional straight-time hours of employment for existing employees before employers may hire from outside. CP 884-892.

Alaska Airlines and certain business groups (“Plaintiffs” below) sued SeaTac in King County Superior Court to prevent Proposition 1 from ever reaching the SeaTac City Council for a vote and to prevent the measure from ever reaching the voters of SeaTac for a vote. The Committee intervened. After obtaining initial success in the trial court, the effort to keep the measure from the voters ultimately failed.² *See BF Foods, et al v. City of SeaTac*, Wash. Ct. App. Div. I, No. 70758-2, Order Granting Discretionary Review and Reversing Trial Court (September 6,

² Judge Darvas issued writs of review, mandate and prohibition based on her findings that the Ordinance was not supported by the required number of valid signatures of registered voters. CP 682. She directed that Proposition 1 not be included on the November 5, 2013 ballot. CP 683. The Court of Appeals reversed, and the Supreme Court denied emergency discretionary review. The Court of Appeals issued its written opinion on February 10, 2014. *BF Foods, et al v. City of SeaTac*, Wash. Ct. App. Div. I, No. 70758-2, Opinion (February 10, 2014).

2013); *BF Foods, et al v. City of SeaTac*, Wash. Supreme Ct., No. 89266-1, Order Denying Motion for Expedited Discretionary Review (September 10, 2013). The measure passed, and the election results were certified by King County, Washington's Department of Elections on November 26, 2013. Declaration of Jennifer Robbins, filed in support of the Committee's Statement of Grounds for Direct Review on January 15, 2014, ¶ 3. The Ordinance, which added a new Chapter, 7.45, to the SeaTac Municipal Code, went into effect on January 1, 2014. *Id.*

On November 8, 2013, Plaintiffs filed an Amended Complaint, adding the Port of Seattle ("the Port") as a Defendant. Subsequently, on November 22, 2013, Plaintiffs filed two motions for declaratory judgment, one based on claims under state law and one based on claims under federal law. CP 897-927; CP 1145-1171. The Port, a nominal Defendant in the case, joined Plaintiffs' state law motion in part. The Committee opposed both of Plaintiffs' motions in their entirety. SeaTac likewise defended the Ordinance.

The Plaintiffs and the Port sought to invalidate the Ordinance based on their fundamental misreading of a jurisdictional provision of the Revised Airports Act of 1945, RCW 14.08.330. This provision reads, in pertinent part:

Every airport and other air navigation facility controlled and operated by any municipality, or jointly controlled and operated pursuant to the provisions of this chapter, shall, subject to federal and state laws, rules, and regulations, be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it. The municipality or municipalities shall have concurrent jurisdiction over the adjacent territory described in RCW 14.08.120(2). No other municipality in which the airport or air navigation facility is located shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations....

RCW 14.08.330. The crux of Plaintiffs' and the Port's claim is that the State's grant to the Port of "exclusive jurisdiction" in the first sentence of this provision "effectively shields it from regulation by the municipality(ies) in which the property is located. Neither the City of SeaTac, nor any other municipality in which the airport is physically located (such as King County), can regulate activities at the airport... Only the Port has the jurisdiction to do so." CP 1358.³

On December 28, 2013, Judge Darvas issued the Order, ruling in pertinent part:

- (1) that the SeaTac Good Jobs Ordinance is inapplicable to and void regarding employers and workers doing business at Sea-Tac Airport, because the airport is under the exclusive jurisdiction of the Port of Seattle pursuant to RCW 14.08.330, CP 1964-1965; and

³ Plaintiffs also sought to invalidate the Ordinance under a host of state and federal laws and the state and federal constitutions, including claims that the Ordinance is preempted by the NLRA, the Railway Labor Act and the Airline Deregulation Act. CP 897-927; CP 1145-1171.

- (2) that the portions of the Ordinance which purport to make it unlawful for covered employers to “interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter,” “to take any adverse action” against any employee for exercising his or her right to “inform other [employees] of their rights under [the Ordinance],” or to retaliate against any employee for informing a union about an alleged violation of the Ordinance, are preempted by the National Labor Relations Act, and are therefore void. CP 1965.

The Court upheld all other provisions of the Ordinance as applied outside of the boundaries of Sea-Tac Airport. CP 1965.

Washington courts have repeatedly held that RCW 14.08.330’s exclusive jurisdiction language precludes only *interference* with airport operations by other municipalities within which an airport is located. *King County v. Port of Seattle*, 37 Wn.2d 338, 348, 223 P.2d 834 (1950); *City of Normandy Park v. King County Fire Dist. No. 2*, 43 Wn. App. 435, 441, 717 P.2d 769, *rev. denied*, 106 Wn.2d 1007 (1986). The jurisdictional statement of the Revised Airports Act of 1945 does not oust other municipalities of all of their broad police powers. Rather, RCW 14.08.330 grants the Port of Seattle exclusive jurisdiction (to the exclusion of all other municipalities, including the City of SeaTac) over *three discrete subjects only*: 1) police operations, 2) charging or exacting license fees or occupation taxes for airport operations and 3) the Port’s exercise of its limited statutory authority to operate Sea-Tac Airport.

In the proceedings below, the Committee issued discovery, seeking documents and answers to interrogatories related to Plaintiffs' claims, including their unsubstantiated assertions of fact about the potential effect of the Ordinance's provisions on the various Plaintiffs and others. CP 1245-1286. Plaintiffs produced no documents or responses, instead successfully seeking a stay of discovery. CP 1203-1211; CP 1928-1929. In issuing its Order on the declaratory judgment motions, the trial court made no findings of fact, and the record included no evidence of any substantial interference with airport operations. Since there is no statutory language or legislative history compelling a different interpretation, controlling precedent mandates the conclusion that, absent evidence that a municipal ordinance as a matter of fact interferes with the Port's operation of an airport, RCW 14.08.330 does not preclude SeaTac's exercise of its broad police power to establish minimum employment standards.

It is undisputed that the legislature has not expressly granted port districts the power to regulate employment relationships at airports. Even if the State has impliedly conferred some limited power on the Port to establish minimum labor standards, SeaTac's broad power to so regulate was nevertheless not restricted, given that the Port had, as of the date of the Order, not in fact exercised such authority.

The trial court further erred by concluding that RCW 14.08.330 operates to preclude *all* regulation by SeaTac at Sea-Tac Airport, given that the State of Washington has empowered local governments to regulate minimum employment standards and there is no direct and irreconcilable conflict between the exercise of a local government's police power to enact worker-protective legislation and the exclusive jurisdiction and control over airports granted to port districts by RCW 14.08.330. In so erring, the trial court failed to harmonize the Ordinance and RCW 14.08.330 in a manner that would preserve SeaTac's extraordinarily broad powers of local self-government to regulate in areas such as minimum employment standards. The court also imposed a rule not mandated by the statute that deprives employers and employees at airports operated by port districts of the right to petition their local governments for redress of grievances.

Finally, the trial court erred by holding that the NLRA preempts certain anti-retaliation provisions of the Ordinance because the Ordinance imposes supplemental sanctions for violations of the NLRA. Controlling Washington authority mandates the opposite conclusion, since regulation of discriminatory and retaliatory employer actions reflect legitimate issues deeply rooted in local concern and therefore fall within an exception to

NLRA preemption; claims asserting rights under the Ordinance are based on substantive rights other than those protected by federal labor law.

This Court should reverse those portions of the Order that invalidate the Ordinance as applied to Sea-Tac Airport and those portions of the Order that hold that the anti-retaliation provisions of the Ordinance are preempted by the NLRA. The Court should instead rule that the Ordinance is lawful and valid in all respects.

IV. ARGUMENT

A. Standard of Review.

The preemptive effect of the Revised Airports Act of 1945 on SMC 7.45 is a question of law subject to de novo review. *Lawson v. City of Pasco*, 168 Wn.2d 675, 682, 230 P.3d 1038 (2010). Jurisdictional questions raised by claims of NLRA preemption are likewise questions of law reviewed de novo. *Brundridge v. Fed.Servs., Inc.*, 109 Wn.App. 347, 357, 35 P.3d 389 (2001), *rev. denied*, 146 Wn.2d 1022, 52 P.3d 520 (2002); *cert. denied*, 538 U.S. 906, 123 S. Ct. 1484, 155 L.Ed.2d 226 (2003).

This Court's review of the state law questions must be guided by the following presumptions and rules of statutory construction: 1) municipal ordinances are presumed to be valid; 2) grants of municipal police power by the state legislature to cities and counties are to be

liberally construed; 3) the party challenging the ordinance bears a heavy burden to prove the ordinance is unconstitutional; 4) an ordinance will be invalidated only if a general statute preempts city regulation of the subject or if the ordinance directly and irreconcilably conflicts with a statute; and 5) statutes must be harmonized where possible. *See, e.g., HJS Dev., Inc. v. Pierce Cnty. ex rel. Dep't of Planning & Land Servs.*, 148 Wn.2d 451, 477, 482, 61 P.3d 1141 (2003); *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 560-61, 566, 29 P.3d 709 (2001).

B. The Trial Court Erred in Ruling That The Ordinance Is Void As To Employers And Employees Conducting Business Within The Boundaries of Sea-Tac Airport Because There Was No Substantial Evidence Or Findings As To Whether Any Portion Of The Ordinance Would Interfere With The Operation Of The Airport.

RCW 14.08.330 grants the Port of Seattle exclusive jurisdiction over certain discrete subjects with regard to Sea-Tac Airport. The statute provides, in pertinent part:

Every airport and other air navigation facility controlled and operated by any municipality...shall, subject to federal and state laws, rules, and regulations, be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it.... No other municipality in which the airport or air navigation facility is located shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations....

Since there is no statutory language or legislative history compelling a different interpretation, controlling precedent mandates the conclusion that this statutory grant to the Port of “exclusive jurisdiction” does not oust from SeaTac its exceptionally broad regulatory authority but rather precludes SeaTac’s exercise of its police powers only where the exercise of those powers as a matter of fact interferes with the operation of an airport.

The trial court here could not properly determine whether or not the Good Jobs Ordinance actually interferes with the Port’s operation of Sea-Tac Airport without considering evidence regarding that issue. Because no substantial evidence was presented to the trial court regarding that issue in this case, and the trial court made no such findings, the trial court’s decision was erroneous and should be reversed.⁴

1. RCW 14.08.330 Only Precludes Municipalities Within Which An Airport Is Located From Interfering With Airport Operations, Conducting Police Operations and Charging or Exacting License Fees And Occupation Taxes.

The key case addressing the preclusive nature of a municipality’s authority under RCW 14.08.330 is *King County v. Port of Seattle*, which

⁴ Even had the trial court in this case *made* factual findings in support of its ruling, which it did not, this Court would be compelled to reverse the decision below because of the absence of substantial evidence supporting those findings. *See, e.g., Bland v. Mentor*, 63 Wn.2d 150, 154, 385 P.2d 727 (1963) (“The appellate function should, and does, begin and end with ascertaining whether or not there is substantial evidence supporting the facts as found”); *Gilbert v. Rogers*, 56 Wn.2d 185, 185, 351 P.2d 535 (1960) (same).

was decided shortly after the Revised Airports Act's enactment. There, King County brought suit against the Port of Seattle to enjoin Yellow Cab from picking up passengers at Sea-Tac Airport without first obtaining a license to do so from the county. The Court rejected the suit, relying not on the language in RCW 14.08.330 granting the Port "exclusive jurisdiction and control" over Sea-Tac Airport, but instead on the statutory language precluding any entity but the Port from having "any authority to charge or exact any license fees or occupation taxes for the operations thereon." 37 Wn.2d at 346-347.

The Court noted, however, discussing RCW 14.08.330 more broadly, that this provision does not in any way remove Sea-Tac Airport from the territory of King County. "The effect of this section," the Court held, "is merely to preclude [King County] from interfering with respect to the *operation* of the Seattle-Tacoma airport and forbids [King County's] exacting any license fees since the legislature has declared its policy to be that the responsibility of providing adequate and satisfactory transportation and other public services shall belong to the Port." *Id.* at 348 (emphasis added).

In *City of Normandy Park v. King County Fire Dist. No. 2*, the Court of Appeals explained the meaning of this holding as follows:

In *King Cy. v. Port of Seattle*, 37 Wash.2d 338, 223 P.2d

834 (1950), our Supreme Court held that the phrase “exclusive jurisdiction and control” only precludes other entities “from interfering with respect to the operation of the Seattle-Tacoma airport ...” *King Cy. v. Port of Seattle, supra* at 348, 223 P.2d 834. In so holding, the court rejected the County’s argument that the words “exclusive jurisdiction” effectively removed the airport from the territory of King County. It follows then that the court’s interpretation of the language “exclusive jurisdiction and control” defeats respondents’ argument in the instant case, *i.e.*, that the “exclusive jurisdiction” language in RCW 14.08 effectively removes the airport property from the Fire District.

43 Wn. App. at 441.⁵

The legislature is presumed to be aware of prior Supreme Court interpretation of its enactments. *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 147, 94 P.3d 930 (2004); *State v. Ose*, 156 Wn.2d 140, 148, 124 P.3d 635 (2005). That the legislature made no change to RCW 14.08.330 in the intervening years to address the interference standard established by *King County* and restated by *Normandy Park* reinforces the soundness of the standard. The court should not overrule such clear precedent interpreting the same statutory language at issue here. *Riehl*, 152 Wn.2d at 147.

Because this Court has repeatedly construed RCW 14.08.330 as “only preclud[ing] other entities ‘from interfering with respect to the

⁵ Relying on *King County’s* construction of RCW 14.08.330, the Court held that airport property within the boundary of the fire district was part of the King County fire district for purposes of determining whether the percentage of the fire district later annexed by the City was sufficient to entitle the City to compensation from the fire district in the form of a percentage of its assets. 43 Wn. App. at 441-42.

operation of the Seattle-Tacoma airport,” it was error for the trial court to invalidate the Ordinance at Sea-Tac Airport in the absence of substantial evidence and factual findings that the Ordinance in fact “interferes with” the operation of the airport. *King County*, 37 Wn.2d at 348.⁶

2. *It Was Error To Invalidate The Ordinance Based On RCW 14.08.330 Because No Substantial Evidence Was Presented Below to Support The Allegations Made by Plaintiffs That The SeaTac Good Jobs Ordinance Would Interfere With the Port of Seattle’s Operation of Sea-Tac Airport.*

Prior to the date oral argument was held on the declaratory judgment motions, Plaintiffs presented the trial court with numerous unsubstantiated allegations regarding the ways that the SeaTac Good Jobs Ordinance would allegedly interfere with the Port of Seattle’s operation of Sea-Tac Airport.

In the Amended Complaint for Declaratory and Injunctive Relief, for example, Alaska Airlines asserted that *if* the prices charged by its four major contractors “increased dramatically” as a result of the Ordinance,

⁶ Nor can the trial court’s decision to strike down the Ordinance in the absence of substantial evidence and findings that the Ordinance actually interferes with airport operations be justified based on the language in RCW 14.08.330 granting the Port exclusive “police jurisdiction.” This language, when read in the context of the rest of RCW 14.08.330, only speaks to police operations, and does not pertain to the range of police powers that SeaTac indisputably has to regulate for the health and safety of its citizens. *See City of Normandy Park*, 43 Wn. App. at 442-443:

[I]t appears that exclusive “police *jurisdiction*” (emphasis added) merely means that the airport is “responsible” for police operations at the airport, and no other municipality may interfere with those operations.

(Emphasis in original).

“Alaska would have to pass some or all of that price increase on to its customers.” CP 846, lines 1-2. Other assertions included those of Leeann Subelbia, the owner of two of the plaintiffs, asserting that if the Ordinance went into effect, “[i]t is likely that [my companies] would have to cut jobs and change [their] menu. The quantity and quality of food might suffer. If [their] costs increase too much, [they] will be forced to close [their] businesses and lay off [their] employees.” CP 938-939, ¶¶ 8-12. Bruce Beckett, Director of Government Affairs for Plaintiff Washington Restaurant Association (“WRA”), asserted that “[A] number of [WRA members] will be adversely affected by the proposed Ordinance,” and that WRA members “could be forced to take steps, damaging to its business...(such as laying off employees or cutting back on the quality and quantity they offer customers)” if the Ordinance takes effect). CP 931, ¶ 3, ¶ 3(D). Finally, Jeff Butler, a Vice-President for Alaska Airlines, asserted that the Ordinance “will result in reduced profit, increased prices, or reduced services” and that, potentially, “Seattle will become a more expensive destination and transportation hub” and Alaska Airlines’ business would thereby suffer. CP 935, lines 3-5, 12-15.

In response, the Committee propounded discovery requests seeking precisely the types of information that would have allowed the trial court to determine as a factual matter whether the provisions of the Ordinance

might actually interfere in some way with the Port's operation of the airport.⁷

Plaintiffs produced no documents or responses to these discovery requests, instead successfully seeking a stay of discovery. CP 1203-1211; CP 1929. In requesting the stay, Plaintiffs asserted that “the only facts asserted [in the motions for declaratory judgment] [were] indisputable facts about the nature and location of Plaintiffs’ business operations and other basic facts about which there is no reasonable dispute.” CP 1207.

The trial court held no evidentiary hearing and made no factual findings. Consistent with its decision to stay discovery, the trial court acknowledged at oral argument that its ruling on the pending motions for declaratory judgment was going to be based on an analysis of the facial

⁷See, e.g. CP 1249, lines 19-20; CP 1259, lines 18-19 (“Identify [the Plaintiffs’] labor-related and non-labor related expenses for 2012”); CP 1250, line 4 (“Identify [the Plaintiffs’] net profits before taxes in 2012”); CP 1251, lines 11-13; CP 1261, lines 11-13 (“Produce all documents relating to any requirements allegedly imposed on [Plaintiffs] by the Port of Seattle regarding the prices it may charge for its products”); CP 1269, lines 12-14 (“Produce all documents relating to how ‘pricing’ is determined in [Plaintiff Alaska Airlines’] agreements with [its four subcontractors cited in the Amended Complaint]”); CP 1270, lines 9-20 (requesting Plaintiff Alaska Airlines “[i]dentify the factual basis for the assertion in the Amended Complaint that if prices charged by its four major contractors ‘increased dramatically,’ ‘Alaska would have to pass some or all of that price increase on to its customers’”, and requesting production of “all documents relating to the assertion in the Amended Complaint that if the prices charged by its four major contractors ‘increased dramatically,’ ‘Alaska would have to pass some or all of that price increase on to its customers ... [including] any and all documents addressing the extent to which increases in Alaska’s contractor costs are reflected in the prices Alaska charges to its customers”); CP 1283, lines 5-8 (“Identify all current members of the Washington Restaurant Association who allegedly ‘will be adversely affected by the proposed Ordinance.’ Explain in detail the injury which these current members will allegedly suffer as a result of the Good Jobs Initiative going into effect.”).

validity of the Ordinance, rather than on any factual assessment regarding how the provisions of the Ordinance might actually impact airport operations. Judge Darvas stated, “I think all I can do in terms of the numerous declarations in this case about the alleged consequences of SMC 7.45 going into effect would be just what the viewpoints of various parties and declarants are on that, rather than making a factual finding. Because I don’t know that the Court can make factual findings about disputed matters without actually conducting an evidentiary hearing, which is not what we’re here for.” Verbatim Report of Proceedings, p. 9, lines 9-16.

Thus, Judge Darvas’ ruling below was based not on any factual determinations, but simply conjecture that raising workers’ wages or providing any of the other benefits that are mandated by the Good Jobs Ordinance would necessarily impact airport operations.

Not only is there is no record evidence to support such a conclusion, there is no evidence that when airport contractors have in the past raised or lowered the wages or benefits of ramp workers, baggage handlers, wheelchair attendants, or concessionaire employees, “airport operations” were impacted. Nor was any evidence presented that past contractor decisions regarding which of a predecessor contractor’s employees to hire impacted such operations. Nor was any evidence presented to support any conclusion that the Ordinance’s provisions would

result in a “dramatic increase” in covered employers’ labor costs, much less that these increases would cause any of the harms predicted by Plaintiffs or be passed on either to Alaska Airlines or to patrons of the airport.

Conjecture regarding issues that require factual determinations is not sanctioned by this Court, which has repeatedly stressed that when a challenged ordinance does not involve First Amendment interests, it is not evaluated on its face, but “must be judged as applied.” *See, e.g., Spokane v. Douglass*, 115 Wn.2d 171, 182, 795 P.2d 693 (1990) (challenge based on vagueness); *see also In re Detention of Mulkins*, 157 Wn. App. 400, 405-406, 237 P.3d 342 (2010) (challenge based on alleged violations of due process).

As a practical matter, there are many different ways that concessionaires and other private employers at SeaTac Airport could adjust to potentially higher labor costs, should the Ordinance result in such, without impacting “airport operations,” including absorbing those costs, reducing net profits, or passing some portion of the increased costs along to airport customers in ways that do not have any substantial impact on airport operations. Because of the absence of an adequate factual record, there was no way that the trial court could legitimately conclude that the SeaTac Good Jobs Ordinance, “as applied,” would constitute

“interfer[ence] with respect to the operation of the Seattle-Tacoma airport.” *King County*, 37 Wn.2d at 348.

3. *It Was Also Error To Invalidate The Ordinance Based On RCW 14.08.330 Absent Substantial Evidence That The Ordinance Actually Interferes With Airport Operations Because, As Of The Date Of The Decision Below, The Port Of Seattle Had Not Exercised Any Regulatory Authority In The Areas Addressed By The Ordinance.*

As explained in § D(1) of this Brief of Appellant, *infra*, it is unlikely that enactment of minimum wage and other labor standards such as those established by the Ordinance falls within the limited statutory grant of power conferred on the Port (a special purpose district) by statute. Even if the Port has some limited authority to enact minimum employment standards, the mere existence of two public entities with *potentially* overlapping powers does not in and of itself pose a governance problem such as would make unnecessary a factual showing that the Ordinance actually interferes with airport operations. *See Municipality of Metro Seattle v. City of Seattle*, 57 Wn.2d 446, 455-56, 357 P.2d 863 (1960) (rejecting the contention “that two municipalities may not exercise the same phase of the police power concurrently in the same area,” noting instead that “[t]his concept of overlapping of phases of the police power has long been with us. Law enforcement, fire protection, and health

protection, all of which are carried on at the city, county, and state levels, in many instances territorially overlap and readily demonstrate this.”).

Regardless of whether the Port *could* lawfully promulgate minimum labor standards, however, it is undisputed that the Port at no point prior to the date of the decision below ever sought to mandate, through regulations applicable to businesses engaged in activities on airport premises, (1) how much workers must be paid, (2) whether any type of paid safe or sick leave must be provided, (3) whether workers must be allowed to retain all or some of the tips or automatic service charges received from customers, (4) whether all, some, or none of a predecessor contractor’s employees must be hired by a successor contractor, or (5) whether all, some or no available part-time work hours must be provided to current part-time employees before new employees are hired.

Nor do any of these minimum employment standards relate on their face to any of the powers granted to the Port under RCW 14.08, *see, e.g.*, the authority “[t]o adopt and amend all needed rules, regulations and ordinances for the management, government and use of any properties under its control.” RCW 14.08.120(2). Assuming *arguendo* that the Port might have the power to enact such worker-protective legislation, despite being limited in its powers to those that have been expressly conferred upon it by statute or are essential to the declared objects and purposes of the

corporation, *see Port of Seattle v. WUTC*, 92 Wn.2d 789, 794-795, 597 P.2d 383 (1979), it is beyond dispute that the Port had not, as of the date of the decision below, in fact adopted any regulations in relation to any of the foregoing areas. It therefore could not properly be concluded that SMC 7.45 interferes with the Port's operation of the airport as a matter of law.

The Supreme Court of Wisconsin's decision in *Courtesy Cab Co. v. Johnson*, 10 Wis.2d 426, 103 N.W.2d 17 (1960), a case regarding the effect of the "complete and exclusive control" language contained in its version of the same Uniform Airports Act that was adopted in our state,⁸ is highly instructive on this issue. In that case, like the one before this Court, the question was whether a city (Milwaukee) had the power to enact legislation relating to an airport operated by a quasi corporation created by a different governmental entity (Milwaukee County) to which the statute granted "complete and exclusive control and management" of the airport. 103 N.W.2d at 22.⁹ Ruling in favor of the city, the Court concluded:

⁸The language of RCW 14.08, which was adopted by Washington State in 1945, was derived almost word-for-word from the language of a "Uniform Airports Act" that was adopted by the National Association of State Aviation Officers ("NASAO") at its Oklahoma City meeting in November 1944. *Compare* Chapter 182, Washington State Session Laws of 1945, pg. 513-529 (CP 1617-1633) *with* National Association of State Aviation Offices, *Recommended United States Aviation Codes*, November 13-14, 1944, pg. 24-37 (CP 1648-1654); *see also* Council of State Governments, *Suggested State Legislation Program for 1947*, November 1, 1946, pg. A-6, note 1 (CP 1549).

⁹ The relevant provision read: "The governing body of a city, village, town or county which has established an airport may vest jurisdiction for the construction, improvement,

A quasi corporation receiving its authority from the legislature has the sole and exclusive right to legislate in those fields necessary to accomplish the distinct purpose for which it was formed. *But until that right to legislate has been exercised, an ordinance of the prime municipality remains effective so long as that ordinance is not contrary to, nor inconsistent with, the existence of the quasi corporation and the carrying out of the functions and duties imposed upon it by the statutes.*

Id. (emphasis added). This interpretation of the meaning of the phrase “complete and exclusive control and management” is highly persuasive with regard to the question before this Court, because RCW 14.08.340 provides that “This act shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state *and other states* and of the government of the United States having to do with the subject of aeronautics.” (Emphasis added.)

Thus, even if the Port *could* theoretically establish minimum employment standards of the kind established by the Ordinance, SeaTac’s regulation on the subjects contained in the Ordinance is a valid exercise of its police powers that in no way infringes on the jurisdiction of the Port, at

equipment, maintenance and operation thereof in an airport commission of 3 commissioners * * * Such commission shall have *complete and exclusive control and management* over the airport for which it has been appointed * * *.” *Id.* at 22 (quoting Wis. Stat. § 114.14 (1959)) (emphasis added).

least unless and until the Port actually asserts its limited authority in such a manner as to be in conflict with that regulation.¹⁰

4. *Neither The Language Of RCW 14.08.330 Nor Its Stated Purposes Compel The Conclusion That The City Of SeaTac Has Been Divested Of Its General Police Power To Regulate Persons And Things At Sea-Tac Airport.*

The “exclusive jurisdiction” language in the first sentence of RCW 14.08.330 should be construed so as not to oust from municipalities within which an airport is located their general police powers to exercise authority over persons or things at the airport. It should be construed narrowly to prohibit only direct interference with airport operations. This is so for several reasons.

First, if the grant of “exclusive jurisdiction and control” necessarily applied to *all subjects*, as Respondents contend, it would have been superfluous for the legislature to include the additional language that “No other municipality in which the airport or air navigation facility is located shall have *any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations.*” RCW

¹⁰The Port of Seattle appears to have conceded as much in the 2005 interlocal agreement it entered into with the City of SeaTac dated February 16, 2006. See CP 1753-1762 (2005 Interlocal Agreement (ILA-2), Recitals A and C) (acknowledging that the Port and SeaTac each have “respective jurisdictional authority” and “each have statutory authority to address common subjects” at Sea-Tac Airport).

14.08.330 (emphasis added).¹¹ *Accord: Woolen v. Surtran Taxicabs, Inc.*, 461 F. Supp. 1025, 1040 (D.C.Tex. 1978) (interpreting very similar language in the Texas Municipal Airport Act¹² not as prohibiting the city within which that airport resides from “exercising any authority at the airport,” but solely from imposing a license fee or occupation tax).¹³ Indeed, the Court in *King County* relied on the language in RCW 14.08.330 expressly precluding a municipality from charging or exacting any license fees, and noted that “[i]n the absence of this provision...King county might have the power to license all taxicabs operating at the airport.” *King County, supra*, 37 Wn.2d at 347.

The Port’s “exclusive jurisdiction” over airport operations should therefore be read as being narrowly limited to jurisdiction over those

¹¹ It is well-established that courts interpret statutory language to give meaning to all terms and phrases. *See, e.g., King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 560, 14 P.3d 133 (2000); *see also Kirtseng v. John Wiley & Sons, Inc.*, — U.S. —, 133 S. Ct. 1351, 1379, 185 L.Ed.2d 392 (2013) (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.”) (quoting *TRW Inc. v. Andrews*, 534 U.S. 19, 31, 122 S. Ct. 441, 151 L.Ed.2d 339 (2001)).

¹² The Texas Municipal Airport Act, in pertinent part, provided:

To the extent that an airport or other air navigation facility controlled and operated by a municipality is located outside the territorial limits of the municipality, it shall . . . be under the jurisdiction and control of the municipality controlling or operating it, and no other municipality shall have any authority to charge or exact a license fee or license tax for operations thereon.

Tex.Civ.Stat. Ann. art. 46d-7 (Vernon 1967), quoted in *Woolen v. Surtran Taxicabs*, 461 F. Supp. at 1040.

¹³ Like *Courtesy Cab Co. v. Johnson*, discussed *supra* at note 9, this out-of-state authority must be deemed highly persuasive because of RCW 14.08.340’s mandate that the Revised Airports Act “be so interpreted and construed” as to be uniform with the laws of other states having to do with the subject of aeronautics.

powers that the Port has been statutorily granted and exercises, and excludes only the exercise of municipal authority that interferes in fact with the Port's exercise of those powers.

Nor do the stated statutory purposes of RCW 14.08.330 compel the conclusion that the "exclusive jurisdiction" language was meant to strip municipal jurisdictions of their general police power to regulate at airports, even in ways that do not conflict with airport operations. RCW 14.08's purpose is reflected in the law's title, which reads:

AN ACT relating to aeronautics; defining terms; providing for the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, operation and regulation of airports, other air navigation facilities and airport protection privileges by municipalities and providing the right of condemnation for such purposes; declaring the ownership and operation of airports, other air navigation facilities and airport protection privileges to be for public, governmental and municipal purposes; providing for the issuance of bonds and for the levying of taxes for airport purposes; validating prior bond issues, indebtedness and contracts; granting specific powers; permitting the acceptance of federal aid; authorizing joint action by municipalities and by municipalities and the state; providing for the appointment of joint boards or commissions, and granting to municipalities or municipalities and the state, acting jointly, the powers granted a single municipality; providing for assistance to other municipalities, and to make uniform the law with reference to public airports, and providing for the establishment of county airport districts.

Chapter 182, Washington State Session Laws of 1945, p. 513 (CP 1617).

Nowhere in this title is there any suggestion that a goal of this law was to

divest cities or counties of the right to exercise their “police power” over those aspects of airports not otherwise regulated by airport authorities.¹⁴

This conclusion is confirmed by the definition of “airports” contained in the Airport Zoning Act, which the Revised Airports Act appears to have incorporated by reference.¹⁵ This latter enactment defined “airports” as follows:

(3) “Airports” means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or right-of-way, together with all airport buildings and facilities located thereon.

RCW 14.12.010(3); *see also* Chapter 174, Washington State Session Laws of 1945, p. 489 (<http://www.leg.wa.gov/CodeReviser/documents/sessionlaw/1945pam1.pdf>). Thus, the mandate in RCW 14.08.330 that “[e]very airport and other air navigation facility” be under the “exclusive jurisdiction and control” of the municipality or municipalities controlling

¹⁴The title of an act is properly considered in determining legislative intent and resolving any ambiguity in the legislation’s text. *See, e.g., Covell v. City of Seattle*, 127 Wn.2d 874, 887-88, 905 P.2d 324 (1995); *Washington Optometric Ass’n v. Pierce Cnty., City of Tacoma*, 73 Wn.2d 445, 449, 438 P.2d 861 (1968).

¹⁵As is noted by the Code Reviser’s note appended to RCW 14.08.010, “The state aeronautic department act (chapter 252, Laws of 1945), to which the Revised Airports Act makes reference in that subsection, contained no definitions.” The State Legislature must have intended to refer to the definitions contained in the other airport-related law that it passed on the same date it passed the Revised Airports Act and the State Aeronautic Department Act, an act entitled “Regulation of Aeronautics” that is known as the “Airport Zoning Act.” *See* Chapter 174, Washington State Session Laws of 1945, pg. 489-500. <http://www.leg.wa.gov/CodeReviser/documents/sessionlaw/1945pam1.pdf> (at pgs. 489-500).

and operating it is entirely consistent with the interpretation urged by Appellant herein, which is that Sea-Tac Airport itself, and its buildings and facilities,¹⁶ are under the control of the Port, but SeaTac is in no way prohibited from exercising its general police power with regard to entities doing business at those locations, absent any actual and substantial impact from the exercise of such power on the Port's airport operations.

C. The Trial Court's Order Must Be Reversed Because RCW 14.08.330 Does Not Completely Preempt Municipal Regulation of an Airport Under the Control of a Port District.

1. *The Trial Court Misapplied This Court's Preemption Cases When It Held That Municipalities Other Than The Port Of Seattle May Not Regulate On Airport Property.*

The trial court erroneously concluded that by enacting RCW 14.08.330 the legislature intended to “preempt the field” and thus SeaTac may not enact ordinances “affecting the given field.” CP 1942-1943. However, “[w]hether there be room for the exercise of concurrent jurisdiction [of the state and a municipality] in a given instance necessarily depends upon the legislative intent to be derived from an analysis of the

¹⁶ “Air navigation facility” is not defined in any of the three aviation-related laws enacted in 1945: the Revised Airports Act, the Airport Zoning Act, or the State Aeronautic Department Act. However, the aeronautics act enacted by the Legislature just two years later, in 1947, defines “Air navigation facility” as meaning “any facility ... used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.” RCW 47.68.020(7).

statute involved.” *Lenci v. Seattle*, 63 Wn.2d 664, 669-70, 388 P.2d 926 (1964). In determining whether a state statute and a local regulation can coexist, the Court examines the intent of the Legislature, as evidenced by the purposes of the law and the “facts and circumstances upon which the statute was intended to operate.” *Id.*; *HJS Dev.*, *supra*, 148 Wn.2d at 477.

In this case, it is important to note first that the Good Jobs Ordinance does not regulate airport operations; it regulates wages and establishes labor standards such as sick and safe leave, worker retention and hours of work. The Washington State Legislature has clearly stated its intent *not* to preempt the field of minimum employment standards, expressly allowing local governments to enact more generous regulations governing wages and working conditions than state law provides. *See, e.g.*, RCW 49.46.120 (state minimum wage standards supplement more favorable local laws and ordinances, which “shall be in full force and effect”); RCW 49.78.360 (family and medical leave); RCW 49.76.060 (domestic violence-related leave). To the extent the trial court voided the Ordinance at Sea-Tac Airport based on field preemption, the trial court erred.

To the extent that the trial court applied *Heinsma* and *Lawson* to conclude that the Good Jobs Ordinance is preempted because it directly conflicts with RCW 14.08.330, that too was error. The municipal powers

statutorily granted to code cities like SeaTac by the state are exceptionally broad. Wash. Const. art XI, § 11; RCW 35A. Under the Optional Municipal Code, cities may take any action on matters of local concern so long as that action is not prohibited by the state constitution or in conflict with the state general law. The legislature thrice repeated its grant of “the broadest” and “greatest” powers of local self-government to code cities. RCW 35A.01.010, 35A.11.020, 35A.11.050. The Optional Municipal Code mandates that all grants of municipal power to code cities shall be liberally construed in favor of the municipality. RCW 35A.01.010, 35A.11.050. *Accord: Heinsma*, 144 Wn.2d at 561.

For this reason, “[w]hen considering whether an ordinance violates article XI, section 11,¹⁷ the court will consider an ordinance to be invalid on grounds of conflict only if the ordinance ‘directly and irreconcilably conflicts with the statute.’” *Heinsma*, 144 Wn.2d at 564 (quoting *Brown v. City of Yakima*, 116 Wn.2d 556, 561, 807 P.2d 353 (1991)); *Lawson, supra*, 168 Wn.2d at 682; *HJS*, 148 Wn.2d at 482. Similarly, a statute will not be construed as restricting a municipality’s authority to enact an ordinance if the ordinance and the statute can be harmonized. *Id.*; *City of Seattle v. Wright*, 72 Wn.2d 556, 559, 433 P.2d 906, 908 (1967).

¹⁷ A municipality’s exercise of its police power must not “conflict with general laws.” Wash. Const. art. XI, § 11.

In order that neither the state statute nor the municipal ordinance be found to be repugnant to the other, it is necessary to find a reasonable construction for each that will give effect to both of them. The trial court erred by failing to harmonize and give effect to both the broad grant of police powers to SeaTac and the narrow grant of authority to port districts to operate the airport.

In enacting RCW 14.08, the state has not designated which of the municipalities within which an airport is located should exercise its sovereign authority with respect to minimum employment standards of employers and employees doing business at the airport. Rather, the state has “left its subordinate municipalities free to regulate each other in those activities which traditionally are thought to lie within their particular competence and are more proximate to their respective functions.” *See Edmonds School Dist. No. 15 v. City of Mountlake Terrace*, 77 Wn.2d 609, 610, 465 P.2d 177 (1970) (where state had not preempted the field of building standards or ousted the city of its jurisdiction over school construction, school district was obliged to comply with the minimum standards set forth in the city’s building code).

As noted above, the Revised Airports Act of 1945 merely precludes other municipalities from interfering with respect to the operation of the airport, which the Ordinance does not do. Because there

is no irreconcilable conflict between the delegation to the Port of the responsibility for airport operations and SeaTac's exercise of the police power in adopting minimum employment standards, the Ordinance must be upheld.

2. Analogous In-State And Out-Of-State Authority Supports The Conclusion That A State's Specific Grant Of Jurisdiction To A Special Purpose District Does Not Preclude Regulation By A Municipality With Overlapping Jurisdiction On Matters Outside Of The Special Purpose District's Authority Or Control.

Washington caselaw dealing with an analogous potential conflict between two overlapping jurisdictions provides overwhelmingly strong support for reversal.

Edmonds School Dist. No. 15 v. City of Mountlake Terrace, cited above, involved a dispute between the City of Mountlake Terrace and the Edmonds School District that arose when Mountlake Terrace attempted to assert its municipal authority to set building code standards for a building to be constructed by the school district, notwithstanding the school district's statutory authority to "build, maintain and operate public schools." This dispute, like the one now before this Court, presented this Court with "a kind of sibling rivalry in governmental affairs." 77 Wn.2d at 610. The Supreme Court held that because the school district's statutory authority did not involve prescriptive rules relating to

construction, the city's authority over this area of school district operation remained intact:

[T]he state, in delegating to school districts power to build, maintain and operate public schools, has not prescribed minimum standards for street offsets, nor directed that building permits be waived in the construction of public school buildings or additions. *It has left its subordinate municipalities free to regulate each other in those activities which traditionally are thought to lie within their particular competence and are more proximate to their respective functions....*

77 Wn.2d at 612-613, 615 (citation omitted, emphasis added).

As here, the special purpose district in *Edmonds* raised the concern that permitting city and county building code regulation over school districts would “interfere with or impinge upon” the districts’ “operation, management and control of the public schools” (here, of airport operations). *Id.* at 614. The Court rejected that argument, concluding: “These fears, we think, are illusory.” *Id.* Further:

We do not apprehend that requiring the Edmonds School District to pay for a building permit and set back its new addition from the street or property lines in accordance with the city building code *empowers the city to assume any responsibilities or control over the way the educational process is conducted.*

Id. at 615.

Similarly, permitting SeaTac to impose worker-protective legislation onto entities that do business on the premises of Sea-Tac

Airport in no way “empowers the city to assume any responsibilities or control over the way” the Port of Seattle operates that airport. The analysis in *Edmonds School Dist. No. 15* provides a compelling rationale for rejecting Respondents’ contention that RCW 14.08.330 limits SeaTac’s authority to enact such legislation and to have such enactments apply at Sea-Tac Airport.

Conversely, neither of the cases relied on by the trial court to construe the term “exclusive jurisdiction” mandate the conclusion that the “sibling rivalry” at issue here is resolved by concluding that RCW 14.08.330 completely divests SeaTac of its otherwise broad police powers to regulate for the health and safety of its citizens.

Dep’t of Labor and Indus. v. Dirt & Aggregate, Inc., 120 Wn.2d 49, 837 P.2d 1018 (1992), involved the validity of state law enforcement power within a federal enclave – Mt. Rainier National Park - once the state voluntarily ceded such lands to the “exclusive jurisdiction” of the federal government. This was thus not a case of “sibling rivalry” deciding the extent of and potential conflict between powers granted to two subordinate municipalities by a state; rather, the case involved the supremacy of federal law over state law. The state ceded “[e]xclusive jurisdiction” over Mt. Rainier National Park to the United States by statute, but Congress then assumed “[s]ole and exclusive jurisdiction” over the park, and the

U.S. Constitution gave Congress the power “[t]o exercise exclusive legislation in *all cases whatsoever*” except to the extent that the state had reserved specific powers. 120 Wn.2d at 52 (emphasis added) (quoting 16 U.S.C. § 95 and U.S. Const. art. I, § 8). Even though federal law trumped the state’s attempt to exercise authority over the federal enclave, the grant of “exclusive” federal jurisdiction even there was not absolute, as it “[did] not erase pre-existing state laws” and the state retained all powers expressly reserved. *Id.*, 52-53 and n.1.

Moreover, the presumptions applied in cession cases are diametrically opposed to those applicable here.

Once the federal government attains exclusive jurisdiction, state regulation of activities within the federal enclave may resume only with the express permission of Congress... The test for determining a congressional grant of jurisdiction is narrow and specific.

Id. at 54. Any jurisdictional grant by the U.S. must be “clear and unambiguous.” *Id.*

By contrast, where a court is determining whether the state has ousted from a city its extraordinarily broad police powers in favor of a municipal corporation, the grant of police power by the state legislature to the city must be liberally construed and the statutes must be harmonized where possible. *See, e.g., HJS Dev., supra*, 148 Wn.2d at 477, 482; *Heinsma, supra*, 144 Wn.2d at 560-61; *State ex. rel Shillberg v. Everett*

District Court, 92 Wn.2d 106, 108, 594 P.2d 448 (1979) (“[a] statute will not be construed as taking away the power of a municipality to legislate unless this intent is clearly and expressly stated.”); *Ayers v. City of Tacoma*, 6 Wn.2d 545, 545, 108 P.2d 348 (1940) (to take away existing power from city, “state statute must be clear and unambiguous”; in resolving ambiguity, act should be harmonized with existing power of cities, rather than construed to nullify that power).

Simpson Timber Co. v. Olympic Air Pollution Control Auth., 87 Wn.2d 35, 549 P.2d 5 (1976) is similarly inapposite. The Court’s ruling in that case that the Department of Natural Resources had “exclusive jurisdiction” over certain subjects relating to forest fire prevention was not based on any state statute providing for “exclusive jurisdiction,” but instead was based on a conclusion, reached by reading certain statutes together, that the legislature had preempted this area of potential regulation. As explained above, the state legislature has not preempted the field of minimum employment standards but has rather encouraged local regulation more favorable than state minimums. *See* § C(1), *supra*.

Persuasive out-of-state authority confirms the conclusion that a state’s specific grant of jurisdiction to a special purpose district does not preempt or preclude regulation by a municipality with overlapping jurisdiction on matters outside of the special purpose district’s authority or

control. See, e.g., *School Dist. of Philadelphia v. Zoning Bd. of Adjustment, City of Philadelphia*, 417 Pa. 277, 290, 207 A.2d 864, 871 (Pa. 1965) (because of the school district's lack of police power and the failure of the legislature to provide minimum standards to be applied by that school district, city zoning laws apply); *Port Arthur Independent School Dist. v. City of Groves* 376 S.W.2d 330, 334-335 (Tex. 1964) ("The city, in performing its duties as delegated to it by the state, does not usurp the authority and responsibility of the school district in the realm of education by requiring the school buildings to meet certain minimum standards of construction.... To hold otherwise would be to leave a hiatus in regulation necessary to the health and safety of the community"); *Cedar Rapids Community School Dist., Linn County v. City of Cedar Rapids*, 252 Iowa 205, 212, 106 N.W.2d 655, 658-659 (Iowa 1960) (subjecting school district to city's building code does not "allow the city to exercise control over the school district and usurp the power of the superintendent to approve the plans").

Even more compellingly, in 1965, New York State adopted a statute relating to the creation of a metropolitan commuter transportation authority, the Metropolitan Commuter Transportation Authority Act, that provided:

[N]o municipality or political subdivision, including but not limited to a county, city, village town or school or other district shall have jurisdiction over any facilities of the [New York city transit] authority and its subsidiaries, or any of its activities and operations.

Laws of New York, 1965, Chapter 324, Section 1266(8) (CP 1665).

Despite this sweeping language, which is strikingly similar to the language contained in RCW 14.08.330, this statute has repeatedly been interpreted as meaning only that municipalities cannot interfere with the New York City Transit Authority (“NYCTA”)’s function or purpose, and that worker-protective legislation enacted by the city within which the city transit authority operates thus *does* apply to transit authority personnel. *See, e.g., Levy v. City Commission on Human Rights*, 85 N.Y.2d 740, 745, 628 N.Y.S.2d 245, 651 N.E.2d 1264 (1995) (because the Transit Authority’s purpose was “to acquire and operate transit facilities,” the compliance with prohibitions against employment discrimination would not interfere with the authority’s function or purpose; thus, a former Transit Authority employee could obtain relief in a gender discrimination case); *Everson v. New York City Transit Authority*, 216 F.Supp.2d 71, 80-81 (E.D.N.Y., 2002) (Section 1266(8) only exempts the NYCTA from the reach of local laws which interfere with the accomplishment of the

NYCTA's purposes and "compliance with local human rights laws will not interfere with the NYCTA's purpose"; thus, law not preempted).¹⁸

D. The Trial Court's Ruling Unacceptably Deprives Both Employers And Employees At Airports Operated By Port Districts Throughout Washington State Of The Right To Petition Their Local Governments For Redress Of Grievances.

1. Port Districts Have Limited Or No Authority To Enact Worker-Or Employer-Protective Legislation.

By contrast with the broad authority granted to cities like SeaTac under Wash. Const. art. XI, § 11 and RCW 35A, the state has not delegated general police powers to special purpose districts like ports, whose municipal authority is limited to that expressly conferred upon them by express words in a statute, necessarily or fairly implied therefrom or essential to the declared objects and purposes of the corporation. *See Okeson v. City of Seattle*, 159 Wn.2d 436, 445, 150 P.3d 556 (2007); *State ex rel. Port of Seattle v. Superior Court*, 93 Wash. 267, 270, 160 Pac. 755 (1916); *Port of Seattle v. Wash. Utilities and Transportation Commission*, 92 Wn.2d at 794-795. Grants of power to municipal corporations are

¹⁸*See also Tang v. New York City Transit Authority*, 55 A.D.3d 720, 720, 867 N.Y.S.2d 453, 454 (N.Y.A.D. 2 Dept., 2008) (holding that the Legislature did not intend to prohibit the application of all Local Laws to the Transit Authority, but only of such laws that interfered with the accomplishment of its transportation purposes); *Bumpus v. New York City Tr. Auth.*, 66 A.D.3d 26, 37, 883 N.Y.S.2d 99 (N.Y.A.D. 2 Dept., 2009) (trial court had subject matter jurisdiction over plaintiff's discrimination suit against an employee of the NYCTA, as N.Y. Pub. Auth. Law § 1266(8) did not exempt the NYCTA or its employees from all local laws affecting its activities and operations, but only those conflicting with statute or any rule of regulation of the NYCTA, and no conflict was shown to exist in the laws at issue).

narrowly construed, and if there is a doubt as to whether the power is granted, it must be denied. *Id.*; see also *Pacific First Fed. Sav. & Loan Ass'n v. Pierce County*, 27 Wn.2d 347, 353, 178 P.2d 351 (1947).

Indeed, this Court has repeatedly established strict limits on the authority of a port district to engage in operations or impose requirements not directly related to its statutory mission, whether those operations are being justified by RCW 14.08 or RCW 53.08, a different statutory grant of authority specifically to port districts. See, e.g., *Port of Seattle v. WUTC*, 92 Wn.2d 789, 795-97, 597 P.2d 383 (1979) (holding that the Port of Seattle was not authorized to provide airporter service); *State v. Port of Seattle*, 104 Wash. 634, 639, 177 P. 671 (1919) (concluding that the Port, although it had power to maintain and operate warehouses and to manufacture ice in connection with its warehousing business, had no power under the grant to build a plant and engage in manufacturing ice largely in excess of its needs, to sell to others); *State v. Bridges*, 97 Wash. 553, 556, 166 P. 780 (1917) (concluding that language authorizing the Port to provide for “rail and water transfer and terminal facilities” did not authorize the port to operate a belt line railroad); *Robinson v. Avis Rent A Car System, Inc.*, 106 Wn. App. 104, 112, 22 P.3d 818 (2001) (holding that the Port lacked authority to modify existing rules relating to car rentals).

RCW 14.08 confers on municipalities that operate airports relatively limited regulatory authority over only those specific subjects related to airport operations that are enumerated in the statute, such as the management and use of property and “safeguard[ing] the public...against the perils and hazards of instrumentalities used in aerial navigation.” RCW 14.08.120(2). While it is clear that the Port may act in its own operational interests and take actions consistent with its statutory mission, neither RCW 14.08 nor RCW 53.08 provide port districts that operate airports any general authority to enact regulations designed simply to benefit either employers or employees doing business at those airports.

2. In The Absence Of Such Authority, Affirmance Of The Trial Court’s Order Would Create A Legal Vacuum.

In light of the extremely limited statutory authority granted to port districts to enact worker- or employer-protective legislation, affirmance of the trial court’s Order regarding RCW 14.08.330 would create a legal vacuum whereby both businesses and workers at every airport owned and operated by a port district in Washington State would be wholly beyond the legal authority of whatever city and county the airport is located within. Alone among all workers in Washington State for example, workers at these airports would have no right or ability to reach out to their local governments (either city or county) for any type of worker-

protective legislation, including legislation related to health and safety, paid sick or safe leave, and minimum compensation or benefits.

In addition, those airports would now be off limits to the entire range of municipal legislation, including laws relating to public health and safety; land use, such as building, plumbing and electrical codes and design standards; animal control laws; litter control laws; and laws governing property maintenance, water utilities, sewage, storm water management and solid waste disposal.

That this is the necessary and unavoidable implication of the trial court's Order was made clear at the December 13, 2013 oral argument on Plaintiffs' Motion for Declaratory Judgment, at which counsel for the Port, Timothy Leyh, was unequivocal in explaining that under the Port's construction of RCW 14.08.330, airports operated by port districts would essentially secede from the cities and counties within which they reside and would be subject only to the limited regulatory control conferred on port districts by statute:

THE COURT: Mr. Iglitzin's example was, what if 15 years ago the City of SeaTac had enacted legislation prohibiting discrimination on the basis of sexual orientation, and that was before we had state and federal laws that prohibited that, are you saying that if that had happened then it would not apply at the airport?

MR. LEYH: Yes.

THE COURT: Okay.

MR. LEYH: In other words, if there is going to be a social justice rule at the airport, it needs to be made and decided by the Port commission who have exclusive jurisdiction over the airport.

Verbatim Report of Proceedings, p. 99, lines 1-12.

Yet it is beyond dispute that the Port has no general authority to enact “social justice rules” at Sea-Tac Airport, but only those rules and regulations which are “necessarily implied or incident to” the limited powers expressly granted to the Port in its enabling statutes or essential to the declared objects and purposes of the corporation. *Okeson*, 159 Wn.2d at 445. Where, as here, the Port would be acting pursuant to its general governmental (as opposed to proprietary) capacity, the powers could not be implied. *Okeson*, 159 Wn.2d at 446-47 (general governmental functions are acts performed “for the common good of all;” essential condition of implied power is that the city is exercising its proprietary, as opposed to general governmental power) (holding that encouraging reduction in greenhouse gas emissions serves a general governmental purpose and therefore is beyond proprietary power of municipality). *See also Okeson v. City of Seattle*, 150 Wn.2d 540, 550, 78 P.3d 1279 (2003) (providing street lights is a general governmental function beyond city’s proprietary power); *Okeson v. City of Seattle*, 130 Wn. App. 814, 823-24, 125 P.3d

172 (2005) (creating art for the general public is an exercise of general governmental authority beyond city's proprietary power).

For this reason, the trial court's interpretation of the Revised Airports Act of 1945, if upheld on appeal, will clearly have a disruptive and detrimental effect on the governance structure currently in place in Washington state, since it could serve to void any current or future attempt by cities and counties to enact worker-protective regulations or otherwise regulate any activities or persons on airport property located within their territorial boundaries, even where such regulations could not validly be enacted by the airport operator itself. Such result would be inconsistent with the requirement that municipal ordinances and state statutes be harmonized wherever possible and that grants of municipal police power to cities and counties be liberally construed so as to preserve that authority where, as here, there is no direct conflict with state law.¹⁹

E. The Trial Court Erred In Ruling That The Anti-Retaliation Provisions Of The Ordinance, SMC 7.45.090(A) And (B), Are Preempted Because They Impose "Supplemental Sanctions" On Employers For Violations Of The National Labor Relations Act.

The portion of the trial court's Order voiding the anti-retaliation

¹⁹ Notably and in sharp contrast to the instant case, in both cases relied on by the trial court, the Court was careful to point out that its holdings would not leave the subject matter at issue in those cases effectively unregulated. *See Dep't of Labor and Indus.*, 120 Wn.2d at 54 (federal OSHA regulations would protect worker safety); *Simpson Timber*, 87 Wn.2d at 41 (air quality standards were preserved). Quite the opposite is the case here.

provisions of the Ordinance as preempted by the National Labor Relations Act (“NLRA”), CP 1960-1965, is contrary to settled law and must be reversed. The Order is wrong because these provisions protect the rights of workers to vindicate the rights granted to them by the Ordinance, not rights vouchsafed to them by the NLRA.

The first section of the Ordinance at issue here, SMC 7.45.090(A), prohibits employers from interfering with, restraining or denying the exercise of, or the attempted exercise of, any right protected by the Ordinance. The second section, SMC 7.45.090(B), provides that employers must not a) “take adverse action” against any employee for exercising his or her right to “inform other [employees] of their rights under [the Ordinance]” or b) retaliate against an employee for informing a union about an alleged violation of the Ordinance. Employees have a private right of action to redress violations of the Ordinance, including its anti-retaliation provisions. SMC 7.45.100.

The trial court voided the above-referenced portions of SMC 7.45.090 as “*Garmon*-preempted” on the basis that they “establish a ‘supplemental sanction for violations of the NLRA.’” CP 1961 (quoting *Wisconsin Dep’t of Indus., Labor & Human Relations v. Gould, Inc.*, 475 U.S. 282, 288, 106 S.Ct. 1057, 89 L.Ed.2d 223 (1986).

San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 244, 79

S.Ct. 773, 3 L.Ed.2d 775 (1959) (“*Garmon*”) prohibits states from regulating activity that the NLRA protects, prohibits or arguably protects or prohibits.²⁰ However, this Court has recognized that *Garmon* preemption will not apply “where the activity regulated was a merely peripheral concern of the Labor Management Relations Act,” or “where the regulated conduct touch[es] interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, [it] could not [be inferred] that Congress had deprived the States of the power to act.” *Hume v. American Disposal Co.*, 124 Wn.2d 656, 663-64, 880 P.2d 988 (1994), *cert. denied*, 513 U.S. 1112, 115 S. Ct. 905, 130 L.Ed.2d 788 (1995) (quoting *Garmon*, 359 U.S. at 243-44).

Pursuant to these exceptions, Washington courts have repeatedly upheld local regulation of discriminatory and retaliatory employer actions. *See Hume*, 124 Wn.2d at 664-65 (upholding state statute prohibiting retaliatory discharge of employees who assert overtime wage claims);²¹ *Brundridge*, 109 Wn. App. at 361 (holding state law claim for wrongful

²⁰ Section 7 of the NLRA protects rights of employees to engage in protected concerted activity. 29 U.S.C. § 157. Section 8 of the NLRA makes it an unfair labor practice for an employer to discriminate or retaliate against an employee for exercising his or her Section 7 rights. 29 U.S.C. § 158(a)(3).

²¹ The court in *Hume* reasoned that the NLRB’s inquiry in an unfair labor practice case would focus on whether overtime wage claims were a protected activity under the NLRA, while a state court evaluating a claim brought under RCW 49.46.100 would focus on whether the employees’ discharge was retaliatory. *Id.* at 664–65. “Consequently, the state-law claim was different from that which could have been, but was not, presented to the NLRB.” *Brundridge*, 109 Wn. App. at 360 (discussing *Hume*).

discharge in violation of public policy not *Garmon*-preempted because claim is different from any that could have been brought before the NLRB and does not implicate collective bargaining or unionization); *Delahunty v. Cahoon*, 66 Wn. App. 829, 839, 832 P.2d 1378 (1992) (rejecting argument that unionized waitresses' claims arising from their having been fired for striking were preempted by *Garmon*).

Washington state, and by extension its municipalities, have a substantial interest in regulating discriminatory employment practices, including adverse actions against employees who assert substantive state or local rights in their workplaces. *Hume*, 124 Wn.2d at 665 (discussing legislative expression condemning employer practices listed in RCW 49.46.100). Section 7.45.090 contains a similar "legislative expression" as that in the Minimum Wage Act, RCW 49.46.100, condemning retaliation for asserting wage claims. Prohibition of discriminatory employer practices related to the rights granted by the Good Jobs Ordinance therefore reflects "deeply rooted local concerns" distinct from unfair labor practices under the NLRA and does not interfere with the federal industrial relations scheme established by the NLRA. *See Hume*, 124 Wn.2d at 665; *Brundridge*, 109 Wn. App. at 360-61; *Delahunty*, 66 Wn.App. at 839.

The "supplemental sanction" prohibition articulated in *Gould* and

cases applying *Gould* does not mandate a different conclusion. In *Gould*, a Wisconsin statute debarred certain repeat violators of the NLRA from doing business with the state. 475 U.S. at 283-84. The Court invalidated the statute as *Garmon*-preempted because it imposed separate, supplemental remedies for conduct prohibited by the NLRA. Similarly, in *Kaufman v. Allied Pilots Ass'n*, 274 F.3d 197, 202-04 (5th Cir. 2001), the Court held preempted a state tort claim brought to sanction a sick-out conducted by an airline pilots' union that had been found to be illegal under the Railway Labor Act ("RLA") (the labor relations law applicable to workers in the airline and railway industries). Permitting such a claim, which would remedy the same controversy at issue in the separate proceeding under the RLA, the Court held, would be inconsistent with the concern expressed in *Garmon* that there be "uniformity and singularity of remedy provided by federal law." *Id.* at 203.

In each of the cases relied on by the trial court, the substantive rights and obligations being regulated arose under the federal labor statute. *See Gould*, 475 U.S. at 287, 291 ("The manifest purpose and inevitable effect of the debarment rule is to enforce the requirements *of the NLRA.*") (emphasis added); *Kaufman*, 274 F.3d 197 (work stoppage prohibited by the RLA); *Healthcare Ass'n of New York State, Inc. v. Pataki*, 471 F.3d 87 (2nd Cir. 2006) (exercise of speech rights under Section 8(c) of the

NLRA).

In sharp contrast, claims brought by employees under anti-retaliation provisions of state or local wage and benefits laws are based on substantive rights *other than* those protected by federal labor law. *See Pulcino v. Fed. Express Corp.*, 141 Wn.2d 629, 651, 9 P.3d 787 (2000), *overruled in part on other grounds by McClarty v. Totem Elec.*, 157 Wn.2d 214, 137 P.3d 844 (2006) (rejecting argument that union-discrimination claim brought under state law was preempted by the RLA, noting, “We find that Pulcino’s union discrimination claim is not preempted by the RLA because it involves substantive [state-law] rights”); *Delahunty*, 66 Wn. App. at 839. Because there is no “serious risk of conflict with national labor policy”²² when a city prohibits retaliation against employees exercising rights granted to them by one of its municipal employment ordinances, there is no interference with the federal regulatory scheme for industrial relations established by the NLRA and no *Garmon* preemption.

While Plaintiffs hypothesize that a claim that is really a “Section 8(a)” unfair labor practice charge under the NLRA might improperly be framed as an anti-retaliation claim under the Ordinance in some future case, this does not justify facial invalidation of these portions of the

²²*Kaufman*, 274 F.3d at 202.

Ordinance. Declaratory judgment actions are proper “to determine the facial validity of an enactment, as distinguished from its application or administration.” *Bainbridge Citizens United v. Washington State Dept. of Natural Resources*, 147 Wn. App. 365, 374, 198 P.3d 1033 (2008). *Accord: City of Federal Way v. King County*, 62 Wn. App. 530, 535, 815 P.2d 790 (1991) (citing *Seattle-King Cy. Coun. Of Camp Fire v. Department of Rev.*, 105 Wn.2d 55, 57-58, 711 P.2d 300 (1985)). If some future plaintiff brings a claim under the Ordinance that is in reality a preempted effort to sue over anti-union actions clearly covered by the NLRA, the courts may hold the claim preempted on its facts. The availability of a *Garmon* defense in any particular case will allow the Ordinance to be applied lawfully in all cases, and is a completely adequate remedy against the Ordinance being applied in an unlawful fashion. This precludes the pertinent provisions of the statute being declared void on their face. *City of Federal Way*, 62 Wn. App. at 535 (“Ordinarily, if a plaintiff has another completely adequate remedy, he or she ‘is not entitled to relief by way of a declaratory judgment’”) (*quoting Reeder v. King Cy.*, 57 Wn.2d 563, 564, 358 P.2d 810 (1961)); *Seattle-King Cy. Coun. Of Camp Fire Council of Camp Fire*, 105 Wn.2d at 58.

For these reasons, this Court should reverse the trial court’s holding that the NLRA preempts the anti-retaliation provisions of SMC

7.45.090(A) and (B).

V. CONCLUSION

For the foregoing reasons, this Court should reverse those portions of the Order below invalidating the Good Jobs Ordinance as applied to Sea-Tac Airport and finding certain portions of it preempted by the NLRA, and instead hold that the Ordinance is lawful and valid in all respects.

Respectfully submitted this 3rd day of March, 2014.



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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March, 2014, I caused the foregoing Brief of Appellant SeaTac Committee For Good Jobs to be filed via email with the Clerk of the Supreme Court, and a true and correct copy of the same to be delivered via email, and placed in the US First Class mail, per agreement of counsel, to:

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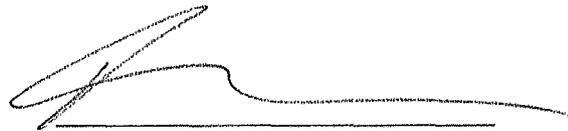
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Please find attached for filing the following document in the above-referenced matter:

- Brief of Appellant SeaTac Committee for Good Jobs

The attorney filing the document is Dmitri Iglitzin (WSBA# 17673), attorney for Appellant SeaTac Committee for Good Jobs. Mr. Iglitzin can be reached via email at lglitzin@workerlaw.com or via telephone at 206-257-6003. Should you have any questions or concerns with this filing, please notify me immediately. Thank you.

Sincerely,

Jennifer L. Schnarr

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